

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IN RE: VITAMINS ANTITRUST  
LITIGATION

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) Misc. No. 99-197 (TFH)  
) MDL No. 1285  
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**FILED**

THIS DOCUMENT RELATES TO:

Cargill, Inc., et al. v. F. Hoffmann-LaRoche, Ltd., et al.

JUL 2 - 2001

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

**MEMORANDUM OPINION Re:**  
**SAMUELSON MOTION TO DISMISS**

Pending before this Court is Robert Samuelson's renewed Motion to Dismiss Plaintiffs' Third Amended Complaint.<sup>1</sup> Based upon careful consideration of Defendant's Motion to Dismiss, Plaintiffs' opposition thereto, Defendant's Reply, and the entire record herein, the Court will deny Defendant's Motion to Dismiss.

**I. BACKGROUND**

Plaintiffs allege that "[s]ince at least January 1988 and continuing in part until at least February 1999, [Robert Samuelson and other] defendants and their co-conspirators engaged in a

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<sup>1</sup>The Cargill Plaintiffs presently include Cargill, Inc., The Iams Company, Agribrands International, Inc., CSA Nutrition, Inc., Ralston Purina Company, Ralcorp Holdings, Inc., and The Coca-Cola Company. On November 22, 1999, Defendant Samuelson moved to dismiss the Cargill Plaintiffs' first amended complaint for lack of personal jurisdiction. On April 13, 2000, Defendant moved to dismiss the second amended complaint. On March 9, 2001, Defendant Samuelson moved to dismiss the Cargill Plaintiffs' third amended complaint, incorporating his original motion to dismiss, filed November 22, 1999. The Court notes that certain Cargill plaintiffs have recently moved for leave to file a fourth amended complaint, which has been challenged by certain defendants as improper and untimely. Because the nature of the proposed amendments do not affect the resolution of Defendant Samuelson's motion to dismiss insofar as application of the fiduciary shield doctrine is concerned, the Court sees no reason to defer ruling on the instant motion.

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continuing combination, conspiracy and agreement to allocate territories, customers, sales volumes and market shares and to rig bids and fix and raise the prices of vitamins and vitamin premixes." Compl. ¶ 71 at 42. During the relevant period, defendants Chinook Group, Ltd. and Chinook Group, Inc. engaged in the sale of choline chloride in the United States and elsewhere. Id. at 3. Defendant Samuelson was a sales manager for Chinook Group, Inc., a wholly owned subsidiary of Chinook Group, Ltd. Samuelson Plea Agreement at 2. As the result of a grand jury investigation in Dallas, Texas, Samuelson agreed to plead guilty to criminal violations of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, for his role in an alleged conspiracy to fix prices, allocate customers, and allocate the market share of choline chloride sold in the United States and elsewhere.<sup>2</sup> Id.

Plaintiffs have filed suit against various defendants, including Robert Samuelson, alleging per se violations of Section 1 of the Sherman Act. This action, brought in federal district court in Illinois, alleges that "each defendant maintains an office or agent, transacts business or is found within the Northern District of Illinois."<sup>3</sup> Compl. ¶ 2. Plaintiffs further allege that "[d]efendants performed unlawful acts in furtherance of their unlawful combination and conspiracy within the Northern District of Illinois and elsewhere that were intended to affect and did affect plaintiffs and others located within the Northern District of Illinois." Id. Defendant Samuelson has moved to dismiss the cause of action against him for lack of personal

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<sup>2</sup>As part of his Plea Agreement, Samuelson was sentenced to probation and assessed with a \$20,000 fine. Compl. ¶ 34 at 24.

<sup>3</sup>The Cargill complaint was originally filed in the United States District Court for the Northern District of Illinois on August 9, 1999, and was transferred to this Court by the Judicial Panel on Multi-District Litigation for coordinated pretrial proceedings on September 10, 1999.

jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

## II. DISCUSSION

### A. Standard of Review

Defendant Samuelson moves to dismiss pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction. Under Rule 12(b)(2), the party asserting jurisdiction bears the burden of proof, but that party need only make a prima facie showing that jurisdiction exists. See Cargo Pacific Logistics, Inc. v. Concord Express, Inc. No. 96C2558, 1997 U.S. Dist. LEXIS 1493, at \*5 (N.D. Ill. Feb. 6, 1997). The Court must accept as true all uncontested factual allegations of the Complaint and draw all reasonable inferences in favor of the Plaintiffs. See id. "A motion to dismiss should not be granted 'unless it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief.'" Clearclad Coatings, Inc. v. Xontal, Ltd., No. 98C7199, 1999 U.S. Dist. LEXIS 13173, at \*23 (N.D. Ill. Aug. 19, 1999) (quoting Kennedy v. Nat'l Juvenile Detention Ass'n, 187 F.3d 690 (7<sup>th</sup> Cir. 1993)).

In federal question cases, a plaintiff must establish two elements to demonstrate that a court has personal jurisdiction over a defendant: "1) that haling the defendant into court accords with the Due Process Clause of the Fifth Amendment; and 2) that defendant is amenable to service of process from the court." Perry v. Delaney, 5 F. Supp. 2d 617, 619 (C.D. Ill. 1998) (citing United States v. De Oritz, 910 F.2d 376, 381-82 (7<sup>th</sup> Cir. 1990)). Although the Court would normally undertake an analysis of the requisite minimum contacts and defendant's amenability to service of process, the sole issue presented by the instant motion is whether Samuelson can avail himself of the fiduciary shield doctrine and thus escape the jurisdictional

reach of the Illinois long-arm statute, 735 ILCS §5/2-209.<sup>4</sup>

### **B. Defendant Samuelson's Motion to Dismiss**

Samuelson argues that the case against him should be dismissed because "Illinois courts do not exercise jurisdiction over employees whose presence, activities, and contacts in the state are conducted solely on behalf of their employers." Def.'s Mem. Supp. at 3. Samuelson ostensibly does not dispute that he has the requisite jurisdictional minimum contacts with Illinois, but rather argues that "any forum-related contacts occurred in his corporate capacity and are, therefore, shielded as a basis for asserting in personam jurisdiction over him." *Id.*, n.1.

Samuelson asserts that the Complaint fails to allege any contacts specific to him, and that "[t]o the extent plaintiffs' . . . allegations are construed to allege such contacts with Illinois, Samuelson's contacts arose out of his employment with Chinook Limited and are protected under the fiduciary shield doctrine." Def.'s Mem. Supp. at 4. Samuelson further asserts that his contacts with Illinois "were not discretionary, but were part of his required duties as a sales manager." *Id.* Despite admitting his participation in a conspiracy to fix prices, allocate customers, and distribute the market of choline chloride, Samuelson Plea ¶ 4(b) at 3, and despite his statement that he attended meetings and was responsible for Chinook sales in Illinois from 1983 through 1998, Samuelson Decl. ¶ 2, Samuelson nonetheless argues that he should be able to avail himself of the protections of the fiduciary shield doctrine because his contacts with Illinois

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<sup>4</sup>While Samuelson purports to premise his Motion solely on the fiduciary shield doctrine, Samuelson's Motion and Reply appear to also raise issues pertaining to alternative grounds for dismissal. To the extent that Samuelson's Motion is based on issues beyond the scope of the fiduciary shield doctrine, the Court will defer ruling on those issues pending completion of discovery and allow Samuelson to address any alternate grounds for dismissal in an appropriate dispositive motion at the conclusion of discovery.

arose out of his employment with Chinook.

Plaintiffs argue that the doctrine is not applicable here, because Samuelson was a high-level employee at Chinook, he personally benefitted from the alleged conspiratorial activities, and he had discretion to make independent business decisions. Samuelson argues that he was never a director or officer of Chinook, Samuelson Decl. ¶ 3, did not have discretion to determine the extent of his contacts with Illinois, id., and did not undertake any business in Illinois "for [his] own personal account or for personal reasons independent of [his] employment." Id. ¶ 4.

### **1. The Fiduciary Shield Doctrine**

The fiduciary shield doctrine is a defense to personal jurisdiction and insulates a party from jurisdiction in a state when that party's actions were undertaken in a representative capacity. "Under the doctrine, 'a court cannot exercise jurisdiction over a nonresident defendant who has performed acts in Illinois solely as a representative of his employer, and not for his personal benefit.'" Clearclad Coatings, 1999 U.S. Dist. 13173, \* 54. "To avoid application of the doctrine, a plaintiff need only allege in good faith that the actions complained of advanced personal rather than employer interests." Cargo Pacific, 1997 U.S. Dist. LEXIS, at \*13. The fiduciary shield doctrine is an equitable doctrine and its application is discretionary. See Rice v. Nova Biomedical Corp., 38 F.3d 909, 914 (7<sup>th</sup> Cir. 1994). Plaintiffs suggest that courts in New York, where the doctrine was first developed, have questioned the validity of the doctrine. However, it is well-established that the doctrine is recognized by Illinois courts. See id. at 912.

## **2. Instances in which Illinois courts have declined to extend the protection of the fiduciary shield doctrine**

Despite having accepted the doctrine, Illinois courts have articulated at least three instances in which the doctrine will not be applied: (1) "where the defendant was motivated in part or solely by personal interest, as opposed to the interests of the corporation," Robinson v. Sabis Educ. Sys., No. 98C4251, 1999 U.S. Dist. LEXIS 9091, at \*10 (N.D. Ill. May 26, 1999) (citation omitted), (2) "where the defendant is the alter-ego of the entity for which he is a fiduciary,"<sup>5</sup> id. (quotation and citation omitted), and (3) "possibly, where the defendant was a director or officer who had discretion regarding whether the contacts occurred." Id. (citation omitted); see also Brujis v. Shaw, 876 F. Supp. 975, 978 (N.D. Ill. 1995). In the aforementioned circumstances, Illinois courts have withdrawn the protection of the fiduciary shield.

As application of the doctrine is equitable and discretionary, fairness is a key factor in determining whether or not to allow Samuelson to avail himself of the doctrine. "The test is whether, on the basis of the defendant's conduct in Illinois or acts affecting Illinois interests, it would be fair to require him to defend an action in Illinois." Perry, 5 F. Supp. 2d at 621. The fiduciary shield doctrine "serves to prevent the 'perceived unfairness' of forcing an individual to defend a lawsuit brought against him personally in a forum in which he performed the only relevant contacts for the benefit of his employer and not for his own benefit." Clipp Designs, Inc. v. Tag Bags, Inc., 996 F. Supp. 766, 768 (N.D. Ill. 1998). Accordingly, this Court must evaluate the nature of Samuelson's actions in Illinois to determine whether it would be

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<sup>5</sup>Plaintiffs do not allege that Samuelson was an alter-ego of Chinook; therefore, the Court analyzes only whether Samuelson may or may not avail himself of the protection of the shield in light of Samuelson's personal interest and discretion in his contacts with Illinois.

reasonable to subject Samuelson to suit in Illinois for those actions.

**a. Personal interest**

One factor that Illinois courts evaluate in determining whether or not the fiduciary shield doctrine applies is whether the defendant's actions were motivated in whole or in part by personal interest. The doctrine denies personal jurisdiction if the defendant's actions were solely on behalf of his employer. If the individual "was acting also on his own behalf - to serve his personal interests,' the shield does not apply." Darovec Marketing Group, Inc. v. Bio-Genics, Inc., 42 F. Supp. 2d 810, 819 (N.D. Ill. 1999) (quoting Rice, 38 F.3d at 912). "For example, an individual who is a high-ranking company officer or shareholder has a direct financial stake in the company's health and can be subjected to personal jurisdiction for actions that result in both personal and corporate benefit." Fountain Mktg. Group, Inc. v. Franklin Progressive Resources, Inc., No. 96C2647, 1996 U.S. Dist. LEXIS 10025, at \*11-12 (N.D. Ill. July 12, 1996).

In the instant action, Samuelson asserts that he is protected by the shield because his contacts were on behalf of Chinook and not for his "own personal account or for personal reasons independent of [his] employment." Samuelson Decl. ¶ 4. Plaintiffs argue that the fiduciary shield doctrine should not protect Samuelson because Samuelson's self interest at least partly motivated his conduct. Pls.' Mem. Opp. at 8 (arguing that Samuelson's "own interests form part of the motivation for his illegal actions"). Plaintiffs further assert that Samuelson does not deny that he personally benefitted from his conspiratorial conduct and that "[t]he failure by Samuelson to exclude the possibility of any personal benefit defeats invocation of the shield." Id.

Following the reasoning articulated in Cargo Pacific, Plaintiff's good faith allegations are arguably sufficient to defeat Samuelson's assertion of the fiduciary shield. See Cargo Pacific,

1997 U.S. Dist. LEXIS 1493, at \*13; Lawson v. Tax Lien Resources Group, No. 98C245, 1998 U.S. Dist. LEXIS 21533, at \*21 (N.D. Ill. Dec. 18, 1998). In light of Samuelson's admissions in his Plea Agreement, as well as his statement in his Declaration that he was responsible for Chinook's choline chloride sales for nearly a decade, Samuelson Decl. ¶ 2, the Court does not find that Plaintiffs' allegations regarding Samuelson's personal interest are in bad faith.

The Court would also direct Defendant to Orix Credit Alliance, Inc. v. Taylor Machine Works, Inc., No. 93C3265, 1995 U.S. Dist LEXIS 3032 (N.D. Ill. March 8, 1995). In Orix, that court determined that even an affidavit by a defendant alleging that he "did not receive any personal remuneration or profit" from a particular conversation was "not an allegation that he derived no personal benefit from any other aspect of the transaction" and thus that court could not "find as a fact that he did not act for his own personal benefit." Orix, 1995 U.S. Dist LEXIS 3032, at \*2-\*3.

As further grounds for dismissal, the parties are also in dispute as to the scope of Samuelson's autonomy in his contacts with Illinois. The Court addresses below Samuelson's arguments regarding his lack of discretion and explains why the allegations of Samuelson's personal benefit and discretion act as a bar to invocation of the shield at this time.

#### **b. Discretion**

Another factor that Illinois courts consider in evaluating the fiduciary shield defense is whether the defendant exercised discretion regarding his contacts with Illinois. While Illinois courts have not conclusively determined whether a fiduciary's exercise of discretion automatically removes him from the protection of the fiduciary shield doctrine, see Perry, 5 F. Supp. 2d at 620, the majority of cases addressing the issue have "generally concluded that the



shield should not apply where the employee has the power to decide what is to be done and chooses to commit the acts that subject him to long-arm jurisdiction." Brujis, 876 F. Supp. at 978; see also J.C. Whitney & Co. v. Renaissance Software Corp., No. 99C3714, 2000 U.S. Dist. LEXIS 6180 (N.D. Ill. April 19, 2000) (explaining that "the fiduciary shield doctrine does not protect parties who exercised discretion regarding their Illinois contacts, and were serving their own interests"); Glass v. Kemper Corp., 930 F. Supp 332, 341 (N.D. Ill. 1996) (noting that several federal courts in Illinois have asserted jurisdiction over defendants where those defendants "were in positions to decide whether or not to make their contacts with the forum"). Those courts that have considered the defendant's discretion have "emphasize[d] that it would not be unfair to exercise jurisdiction over someone acting in a representative capacity when he was in a position to decide whether or not to perform acts in Illinois." Brujis, 876 F. Supp. at 979.

Samuelson points to three cases in which Illinois courts have declined to extend jurisdiction over persons acting within the context of their employment. Samuelson first cites to Giddens v. Steak and Ale of Ill., Inc., 994 F. Supp. 942 (N.D. Ill. 1998). In Giddens, the defendant Sorenson, Area Director and manager of eight Steak and Ale stores in Michigan, was required to attend management meetings in Illinois. The court declined to extend jurisdiction over Sorenson because "[h]is presence and activity in Illinois were solely on behalf of Steak and Ale," Giddens, 994 F. Supp. at 944, Sorenson's attendance at the Illinois meetings was not discretionary, id., and Sorenson would not have personally benefitted from his Illinois contacts. See id. at 945. In the instant action, while Samuelson argues that his contacts with Illinois were not discretionary, Plaintiffs assert that Samuelson nonetheless personally benefitted from his

participation in the alleged price-fixing conspiracy. As noted above, to avoid application of the doctrine, Plaintiffs "need only allege in good faith that the actions complained of advanced personal rather than employer interests." Cargo Pacific, 1997 U.S. Dist. LEXIS, at \*13.

Samuelson next cites to Fischer v. A.C.J. Chaston, No. 95C3127, 1995 U.S. Dist LEXIS 13976 (N.D. Ill. Sept. 22, 1995). In Fischer, that court declined to exercise jurisdiction over Chaston, a manager for defendant Eagleridge, because his Illinois contacts were undertaken in a representative and fiduciary capacity as a manager. In rendering its decision, the court noted that the shield is withdrawn if an agent is acting also or instead on his own behalf, but found nothing in the record before that court to suggest that Chaston had a personal interest in the disputed transaction. Unlike Fischer, in the instant action Plaintiffs assert that Samuelson did derive a personal benefit from his conduct in Illinois. See, e.g., Pls.' Mot. Supp. at 8-10. As discussed above, all that is required to overcome invocation of the shield at this stage in the litigation is a good faith allegation that Defendant acted at least in part for personal interests. See, e.g., Cargo Pacific, 1997 U.S. Dist. LEXIS 1493 at \*13.

Samuelson also cites to Alpert v. Bertsch, 601 N.E.2d 1031 (Ill. App. Ct. 1992), in which plaintiff, who was terminated as director and president of International Cup Corporation ("ICC"), brought suit against ICC and four of ICC's individual shareholders and directors alleging, inter alia, breach of contract. The court declined to extend jurisdiction over the individual shareholders and directors for two reasons: 1) the court found no grounds that warranted a piercing of the corporate veil, and 2) the court determined that the defendant shareholders were protected by the fiduciary shield doctrine. In extending the doctrine to the defendants, the court explained that "all the acts complained of by plaintiff were undertaken by defendants in their

representative or fiduciary capacity on behalf of the corporation, and not as part of a conspiracy or secret partnership." Id.

In the instant action, Samuelson was an Export Sales Manager for defendant Chinook Group Limited, was responsible for Chinook's Illinois sales from 1983 through 1998, had telephone contact with Illinois customers, and attended meetings in Illinois approximately four times per year. Samuelson Decl. ¶ 2. Although Samuelson insists that his contacts with Illinois were not discretionary but rather were part of his required duties as a sales manager,<sup>6</sup> Decl. ¶ 2, Plaintiffs assert that Samuelson was not "compelled to participate in the underlying allocation and price-fixing scheme." Pls.' Mem. Opp. at 10. Samuelson's assertion that he was acting within the scope of his employment is simply insufficient to overcome Plaintiffs' assertions regarding Samuelson's personal interest and discretion in his contacts with Illinois. See Larson v. Reliance Medical Products, Inc., No. 91C6837, 1992 U.S. Dist. LEXIS 2758, at \*19 (N.D. Ill. March 10, 1992) ("statement that [defendant] was acting within the scope of her employment is not enough" to establish that the defendant had no discretion in her actions; defendant could have been motivated in part by personal motives).

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<sup>6</sup>Samuelson points out that he was merely a sales manager and not a director or officer of Chinook, Decl. ¶ 3, which would be relevant presumably because Illinois cases that have turned on the discretion component have decline to extend the shield to corporate directors or other high-level officers acting in a discretionary capacity, but have extended the protection of the doctrine to lower-level employees who had no alternative other than unemployment in carrying out their actions. See, e.g., J.C. Whitney & Co. v. Renaissance Software Corp., No. 99C3714, 2000 U.S. Dist. LEXIS 6180, at \*12-\*13 (N.D. Ill. April 19, 2000) (discussing Rollins v. Ellwood, 565 N.E.2d 1302 (Ill. 1990)). While Samuelson may have been a sales manager as opposed to a director, his statement that he had no discretion to determine the extent of his contacts with Illinois is inherently at odds with his Plea Agreement.

In addition to presenting the arguments discussed above, Samuelson asserts that Plaintiffs have misconstrued the discretion exception to the doctrine and have "attempt[ed] to avoid application of the [doctrine] by construing the shield's limited exceptions as if they swallow the doctrine." Def.'s Reply at 4. Samuelson proposes that "[i]t is the exceptions which are narrow, not the doctrine." Id. However, Illinois courts have stated that it is the protection of the fiduciary shield that is limited. See Lawson, 1998 U.S. Dist LEXIS 21533, at \*19 (discussing the succession of cases that have "scaled back the fiduciary shield doctrine").

Samuelson also argues that while Plaintiffs' arguments are directed at whether Samuelson had discretion to engage in the allegedly unlawful conduct in Illinois, the discretion exception requires the Court to consider whether Samuelson had discretion to determine whether his contacts with Illinois occurred. Id. Samuelson contends that because his employment required him to have contact with Illinois, he should be afforded the protection of the fiduciary shield. In support of his proposed interpretation of the doctrine, Samuelson asserts that in Robinson, the court's holding was premised upon the fact that plaintiff failed to allege that the defendants had discretion about their actual contacts, as opposed to allegedly unlawful acts, in Illinois. Def.'s Reply at 5. However, in Robinson the court merely stated that the plaintiff "proffer[ed] no evidence indicating personal interest on the part of either [defendant]." Robinson, 1999 U.S. Dist. LEXIS 9091, at \*10. Moreover, unlike in the instant action, the plaintiff in Robinson did not dispute the defendants' affidavits stating that the defendants were acting solely in their capacity as employees. Id. In addition, the court made clear that while it was analyzing the discretion issue, it was not making a determination as to "whether a showing of discretion bars application of the fiduciary shield doctrine." Id., n.3. Notably, the court did not make a

distinction in its analysis between discretion to determine whether contact with the forum occurred and discretion as to whether to engage in the questionable conduct.

In further support of his proposed interpretation of the discretion exception, Samuelson directs the Court to Rice, where the court stated that if the defendant's actions in Illinois were conducted solely on behalf of his employer, then the defendant would be protected by the fiduciary shield doctrine, "regardless of whether he exercised discretion rather than merely carrying out precise orders mechanically."<sup>7</sup> Rice, 38 F.3d at 912. However, even a cursory reading of Rice reveals that the shield is withdrawn "if the agent was acting also or instead on his own behalf." Id. (emphasis added). The Rice court determined that the defendant was not "on a frolic of his own" when he fired the plaintiff, and found no evidence of personal motives on the part of defendant for his actions, such as lining his own pockets, that would remove the shield. See id. at 913.

In the instant action, it is not necessary for the Court to determine whether the primary focus of the discretion exception lies in whether a defendant had discretion in his general contacts with the forum as opposed to his allegedly unlawful conduct in the forum.<sup>8</sup> In order to

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<sup>7</sup>The Court would direct Defendant to Brujic, in which that court commented that the statement in Rice about discretion was "clearly dictum and we do not think that the court intended to settle the issue with a single sentence unsupported by analysis." Brujic, 876 F. Supp. at 979. The Brujic court concluded that Rice "does not undermine our conclusion that all the courts that have examined the discretion issue have held that the exercise of discretion removes the defendant from the fiduciary shield's protection." Id.

<sup>8</sup>Some Illinois cases have examined whether the defendant exercised discretion in performing the allegedly wrongful conduct. E.g., LaSalle Bank Nat'l Ass'n v. Epstein, No. 99C7820, 2000 U.S. Dist. LEXIS 3142, at \*4 (N.D. Ill. March 8, 2000) ("whether defendant had the discretion to choose whether or not to perform the allegedly tortious acts"). Other cases have used more general language referring to the defendant's discretion as to whether contact with the

avoid application of the shield, Plaintiffs "need only allege in good faith that the actions complained of advanced personal rather than employer interests." Cargo Pacific, 1997 U.S. Dist. LEXIS, at \*13. Plaintiffs have alleged self-interest on the part of the Defendant, Pls.' Mem. Opp. at 8-10, and in light of Samuelson's Plea Agreement, the Court does not find that the Plaintiffs' allegations are in bad faith.

In summary, by Samuelson's own admission, he was responsible for Chinook's choline chloride sales in Illinois for nearly two decades and he pleaded guilty to engaging in a price fixing conspiracy pertaining to choline chloride. Although Samuelson may have been required to have contact with Illinois as a part of his job, his precise actions in Illinois were not necessarily mandated by his employer. In light of the good faith allegations of Samuelson's self-interest and discretion in his actions in Illinois, the Court determines that Samuelson may not invoke the fiduciary shield doctrine to justify dismissal at this time. In making its determination, the Court does not hold that Robert Samuelson is necessarily subject to personal jurisdiction in Illinois. With regard to Samuelson, Plaintiffs' Complaint may or may not be subject to dismissal on other grounds. But insofar as application of the fiduciary shield doctrine is concerned, the Court does not find that principles of equity and fairness mandate that the Court permit Samuelson to avail himself of the doctrine at this stage in the litigation. Should discovery reveal that Samuelson's discretion was limited or that he was acting solely on behalf of Chinook, he may repetition the

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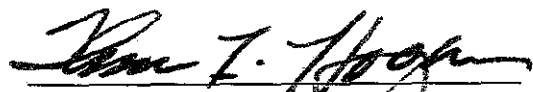
forum occurred. E.g., Robinson v. Sabis Educ. Sys., Inc., No. 98C4251, 1999 U.S. Dist. LEXIS 4251, at \*6 (N.D. Ill. May 26, 1999) ("discretion regarding whether the contacts occurred"). This Court finds no instance in which Illinois courts have addressed the semantic distinction and the potentially diverse outcomes that could result if different meanings were assigned to the alternative phrasings.

Court.

### III. CONCLUSION

Plaintiffs have made good faith allegations and produced evidence in support of these allegations to show that Samuelson's Illinois contacts were motivated in part by personal interest and discretion. For the foregoing reasons, the Court will deny without prejudice Samuelson's Motion to Dismiss based on the fiduciary shield doctrine. An order will accompany this opinion.

June 29, 2001

  
Thomas F. Hogan  
Chief Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

IN RE: VITAMINS ANTITRUST  
LITIGATION

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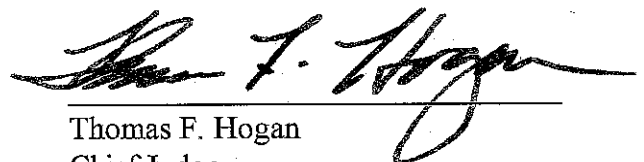
**ORDER Re:**  
**SAMUELSON MOTION TO DISMISS**

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

In accordance with the accompanying Memorandum Opinion, it is hereby

**ORDERED** that Robert Samuelson's renewed Motion to Dismiss Plaintiffs' Third  
Amended Complaint based on the fiduciary shield doctrine is **DENIED WITHOUT**  
**PREJUDICE.**

June 29, 2001

  
Thomas F. Hogan  
Chief Judge

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